under the Post Office Enactment — an offence which does not exist in our law.

In view of what has been said in the preceding paragraph it is unnecessary for us to express any view as to the admissibility or otherwise of the statements made by the accused to the Police Inspector when the rubber stamp was found in his bag. The conviction must be quashed on the ground that the prosecution failed to prove the offence charged.

The appeal is allowed.

Appeal Allowed.

CHIA CHIN SEN v. PUBLIC PROSECUTOR.

[Appellate Criminal Jurisdiction (Bostock Hill, J.)
August 23, 1947]

Excise Enactment, Johore, Section 9 (i) — Possession of a still or other apparatus for distilling or manufacturing intoxicating liquor — What constitutes.

In this case the appellant was charged under Section 9 (i) of the Excise Enactment, Johore, with knowingly having in his possession apparatus for the manufacture of intoxicating liquor and was convicted and fined $100/-. The Appellant was a tin-smith and on the 8th of May 1947 there was found-in his shop three pieces of apparatus such as are used in a still for manufacturing samsu. Evidence was also given that these three pieces of apparatus called respectively a condenser, a pipe and a salor (or spout) would require a pan or boiler to constitute a complete still.

Held, (1) that where some important part of the complete still or other apparatus is missing, it is essential that there should be evidence that the apparatus found had been used for distilling or manufacturing intoxicating liquor or that the possessor definitely knew that it was so used; (2) that in the absence of such evidence in this case, there was reasonable doubt, and that the accused must be given the benefit of it.

Case referred to :—

(1) *P. P. v. Manickam* (1940) 9 M.L.J. 133.

CRIMINAL APPEAL.

J. L. R. Pillai for the Appellant.

W. M. McCall for the Respondent.

Bostock Hill, J. : — In this case the Appellant was charged under section 9 (i) of the Excise Enactment (No. 102) with knowingly having in his possession apparatus for the manufacture of intoxicating liquor and was convicted and fined $100.00.

Appellant was a tin-smith and on 8.5.47 there were found in his shop three pieces of apparatus such as are used in a still for manufacturing samsu. Evidence was also given that these three pieces of apparatus, called respectively a condenser, a pipe and a salor (or spout), would require a pan or boiler to constitute a complete still,

Appellant gave evidence that a Chinese, name unknown, had on 30.4.47 come to his shop and told him to make "a tin drum 3 ft. high and 16 inches in diameter with a hole to be bored 6 inches from the top, a pipe to go into the hole, pipe over a foot long, with a salor on the outside below the pipe". He stated that he did not know for what purpose they were to be used. He also stated that he had never made such a drum before and did not ask the man who ordered these things what he wanted to do with the drum.

Mr. Pillai for the Appellant contended that the three pieces of apparatus found did not constitute a still. Mr. McCall, for the Respondent, was inclined to agree that they did not constitute a still, but argued that they were "apparatus for distilling or manufacturing intoxicating liquor". He argued that the words "or other apparatus" in section 9 of the Excise Enactment were meant to cover component parts of a still; otherwise they were meaningless.

The only case that offers any guidance on the point is *P. P. v. Manickam*[1]. This was argued before the Court of Criminal Appeal and the judgment of McElwaine, C. J. (S.S.) is of assistance. The learned Chief Justice stated that whether or not a person who has in his possession the dismantled components of a still, has a still in his possession is entirely a question of fact. In that case *all* the components of a still were found on the premises and some of them were concealed. There was also evidence of their past use together as a still and the accused's explanation as to his possession of them was very weak.

In the present case, perhaps the most important constituent of a still, the pan or boiler, was not there and there was no evidence that the apparatus that was found had been used as a still. In fact it definitely had not, as it was quite new. The learned Magistrate, however, stated in his grounds of judgment that he was unable to believe that the Appellant did not know that the articles were used for samsu-making.

The first point to consider is whether the three pieces of apparatus found constitute "a still or other apparatus for distilling or manufacturing intoxicating liquor". I incline to the opinion that primarily the Enactment refers to a complete still and that the words "or other apparatus for distilling or manufacturing intoxicating liquor" must be construed *ejusdem generis* with the word "still" which connotes a complete apparatus. In any case, I am of opinion that if some important part of the complete "still" or "other apparatus" be missing, then it is essential that there should be evidence that the apparatus found had been used for distilling or manufacturing intoxicating liquor,

or that the possessor definitely knew that it was to be so used. It is not enough, unless there are circumstances arousing grave suspicion, that the incomplete apparatus found could be used as part of a still. If that were enough many innocent persons would be put upon their trial because they were in possession of apparatus that might form part of a still.

As the learned Chief Justice (S.S.) pointed out in the case above referred to "Most moderately equipped houses contain fire-places, baths, pots, jugs, drain pipes and other utensils which can be turned into a Heath Robinson still such as is used by most people who offend against the Excise Enactment", but, he went on, "Before the householder is convicted of keeping a still, there must be evidence from which it can be inferred beyond reasonable doubt that these innocent utensils are intended to be used as parts of a still".

On the whole of the facts in the present case I feel, despite the finding of the learned Magistrate, that there was resonable doubt and that the accused must be given the benefit of it.

Accordingly I allow the appeal and set aside the conviction.

The fine must be repaid to the accused.

Exhibits P. 1, P. 2 and P. 3 to be returned to the Appellant.

Appeal Allowed.

KOH KEH CHOI v. PUBLIC PROSECUTOR.

[Appellate Criminal Jurisdiction (Evans, J.) July 14, 1947]

Food Control Proclamation — Operating a rice mill for the purpose of milling padi without a licence — Confiscation of rice mill.

In this case the appellant was convicted as being part owner and manager of a rice mill for operating the rice mill for the purpose of milling padi without a licence. The evidence showed that rice was found in the mill after it had been sealed by officers of the Food Control Department and that appellant was the part owner of the mill and lived in the neighbourhood. On conviction, the learned District Judge ordered the rice mill to be confiscated. The appellant appealed.

Held, (1) that there was no evidence that the appellant personally operated the mill and therefore his conviction was wrong; (2) that evidence should have been taken as to whether the rice mill was a fixture or not before the order of confiscation was made.

Cases referred to :—

(1) *Goh Chong Hin and S. R. M. S. Lechmanan Chetty v. The Consolidated Malay Rubber Estates Limited* 5 F.M.S.L.R. 86.

(2) *Hellawell v. Eastwood* 6 Ex. 295.

CRIMINAL APPEAL.

Leong Yew Koh for the Appellant.

M. G. Neal for the Respondent.

Evans, J. : — In this case the appellant was convicted as being part owner and manager of a rice mill for operating the rice mill for the purpose of milling padi without a licence. The appellant was represented by Mr. Leong Yew Koh who took a great many objections to the proceedings of the Food Control Officers and to the proceedings in the Court below. He contended that the Food Control Inspector's entry on the mill in question was unlawful and also that his previous action in sealing the mill was without any legal authority. These he described as irregularities the consequence of which was to vitiate all subsequent proceedings. The authorities, however, to which he referred were primarily concerned with Court procedure and do not seem to show that the consequence he refers to would follow from the facts he alleges.

The Inspectors visited the mill at 10.05 p.m. on 23rd April, 1947. In a matter of routine inspection this is an unreasonable hour. If on the other hand this visit was for the purpose of uncovering some criminal practice the unseasonable time of calling might be more suitable for the purpose in view. In such a case, however, it is more usual to be provided with the necessary legal warrants in order to effect entry, if necessary. They apparently found the accused in bed. He, however, made no objections to the unreasonable hour at which they chose to come and took the Chief Inspector and his companions into the mill. It may be that the owner was under the impression that the inspectors had a right of entry. This, however, is, in my opinion quite immaterial. When the Chief Inspector with his companions went into the mill house, they were there with the owner's consent, even if the consent were unwilling and mistaken. There is no question whatever here of a forcible entry.

The learned District Judge found that the rice mill had been previously sealed by the Chief Inspector on the 9th April, 1947, and "according to this Chief Inspector and others who accompanied him, all rice grains and dust were removed from the huller before sealing; on the 23rd April when the Inspector again visited the mill he found the original seal gone and a false seal substituted". There is evidence to support this finding. Mr. Leong objected to the evidence regarding the size of the lettering on the 'false seal' and the colour of the wax. It may be that these are largely matters of opinion but they are matters by which such a conclusion is usually proved. The wax